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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK, NY Date: MAR 24 2010

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the appeal will be dismissed as moot. The matter will be returned to the district director for continued processing.

The record reflects that the applicant is a native and citizen of the Ukraine who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willfully misrepresenting a material fact to procure an immigration benefit. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and child in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated August 24, 2007.

On appeal, the applicant's husband contends he does not understand why his wife is inadmissible for fraud or willfully misrepresenting a material fact. Counsel further contends that the applicant established extreme hardship to her husband.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

In this case, the record shows that the applicant first married her husband, [redacted] on December 30, 1995, in Ukraine. The record shows the applicant entered the United States as a visitor on March 29, 1996. The record shows that the applicant remarried [redacted] in New York on October 7, 1996. Both marriage certificates are contained in the record. On September 17, 1998, the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485) through the diversity visa program was denied because:

> Information on file at the US Embassy in Kiev, Ukraine indicates that [the applicant] stated under oath on her OF-156 dated Feb. 1996 that she was currently married to [redacted]
>
> On [the applicant's] G-325A [the applicant] indicated that [she was] married to [redacted] in New York in 1996; [the applicant] further declared that [she] had not previously been married.

Decision of the New York District Director, dated September 17, 1998. Based on this information, the district director found the applicant was inadmissible for fraud or willfully misrepresenting a material fact in order to procure an immigration benefit. However, according to the applicant, "[t]he reason for [her] being married twice (but to the SAME person) was when [she] was filling papers for Green Card the immigration center, where I was doing that, told us that US Embassy do[es] not recognize the marriage certificate from Russia and suggested us to go to City Hall and do it again and this will help us to speed up the process." *Letter from Applicant*, undated.

After a complete review of the record, the AAO concludes that the evidence does not support a finding that the applicant is inadmissible for fraud or willfully misrepresenting a material fact in order to procure an immigration benefit. To be found inadmissible for willful misrepresentation under section 212(a)(6)(C)(i) of the Act, an alien must have presented material information, knowing it to be false. *See Matter of Healy and Goodchild,* 17 I&N Dec. 22, 28-29 (BIA 1979). In the context of a nonimmigrant visitor, an alien's preconceived intent to immigrate to the United States may indicate that he or she engaged in willful misrepresentation in the course of obtaining his or her nonimmigrant visa. *See* Section 101(a)(15)(B) of the Act, 8 U.S.C. § 1101(a)(15)(B), (defining a nonimmigrant visitor as, in pertinent part, "an alien . . . having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.") *See also Matter of Ibrahim*, 18 I&N Dec. 55, 57 (BIA 1981) (reaffirming *Matter of Garcia-Castillo*, 10 I&N Dec. 516 (BIA 1964)). In this case, however, the record fails to establish that the applicant presented false information regarding her marital status or that she entered the United States with a preconceived intent to immigrate.

The record shows that the applicant entered the United States as a visitor on March 29, 1996. The nonimmigrant visa application, relied upon by the district director is not in the record. Even if documented, however, the applicant's statement to the consular officer that she was married to [redacted] was accurate. The record contains the former couple's first marriage certificate issued in 1996 in the Ukraine. More than six months after her arrival in the United States, on October 7, 1996, the applicant remarried [redacted] who filed a Form I-130 petition for alien relative on her behalf on December 18, 1996. On August 12, 1997, the applicant applied for a visa through the diversity visa program. On her Form G-325A, Biographic Information, dated October 18, 1997 and submitted with her Form I-485, application to adjust status, the applicant stated that she married [redacted] in New York in 1996. Again, her statement of her marital status was accurate and is verified by the former couple's second marriage certificate issued in New York City in October 1996. The Form G-325A asks applicants to list their "former husbands or wives." The fact that the applicant stated "not applicable" does not evidence an intentional misrepresentation of her marital status because, at the time, she had only ever been married to one person, [redacted]

In sum, the record does not establish that the applicant intentionally concealed or misrepresented her marital status in order to procure an immigration benefit; or that she entered the United States on a nonimmigrant visa with a preconceived intent to immigrate. The record contains both of the applicant's marriage certificates to [redacted] and the evidence does not indicate that the applicant ever falsely represented her marital status to U.S. consular or immigration officials. In addition, she

did not file applications for an immigrant visa and adjustment of status until over a year after her arrival in the United States. Under these circumstances, the evidence does not support the finding that the applicant is inadmissible for fraud or willful misrepresentation of a material fact.

Because it has not been established that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, the waiver application is moot and we do not reach the issue of whether the district director correctly assessed hardship to the applicant's spouse under section 212(i) of the Act.

ORDER: The August 24, 2007 decision of the New York District Office is withdrawn as it has not been established that the applicant is inadmissible. The appeal is dismissed as moot. The district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.